REMARKS

The Office Action dated October 30, 2008 has been received and reviewed. This response is directed to that action.

Claim 1 has been amended. Support for the amendment can be found throughout the specification, and particularly in paragraphs [0062], [0063], [0073] and [0074] of the published US application 2006/0140901 A1, and in claim 16 as originally filed. No new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendment and the following remarks.

Claim Rejections- 35 U.S.C. §103

The Examiner maintained the rejection of claims 1-21 under 35 U.S.C. §103(a) as obvious over Lindauer (US 5,139,864) in view of Benko et al. (US 2003/0091466). The applicants respectfully traverse this rejection.

The applicants submit that a *prima facie* case of obviousness cannot be established because the references, as combined, do not teach all of the limitations of the present claims. Moreover, the differences between the presently claimed invention and the prior art are outside the level of ordinary skill in the art.

The device of the presently claimed invention only permits the second phase from evaporating once the first phase has substantially completely evaporated, thus allowing some evaporation of the third phase. There is minimal, if any, simultaneous evaporation of the first and second volatile substances in the present invention. This feature is not taught in either Lindauer or Benko, and completely contrasts with Lindauer, which does, in fact, teach

simultaneous emanation of the first and second volatile substances.

The construction of the presently claimed device is significantly different from, and completely nonobvious to, Lindauer's device. The present invention permits greater control of vaporization release rates of the phases. Lindauer, on the other hand, teaches only a random evaporation of the second phase once it has been slightly exposed by evaporation of the third phase. There is little, if any, control of the rate and distribution of evaporation of the first and second volatile substances after the second phase has been exposed. Accordingly, Lindauer fails to teach or does not suggest that it would have been useful, or even possible, to control vaporization release rates.

In response to the foregoing, the Examiner disagreed with the applicant's assertion, stating that "the second phase [of Lindauer] does not evaporate randomly, raterh it only evaporates after the first and third phases have evaporated, thus exposing the second phase in a rate controlled manner". (Office Action, page 6, lines 19-21). Before analyzing this statement in view of Lindauer, the Examiner is respectfully reminded that the first vaporizable phase of the presently claimed invention has been identified as being equivalent to Lindauer's "pockets of perfume" noted as reference number 107, the second vaporizable phase as being equivalent to Lindauer's "inner core cylinder" noted as reference number 103, and the third gel phase as Lindauer's "gel or foam", noted as reference number 101. Lindauer also notes that the "pockets of perfume" 107 are volatile substances contained within, and emanated from, the gel or foam 101. With the foregoing understandings of Lindauer in mind, the applicants direct the Examiner's attention to col. 9, lines 37-43, which states "[as] foam or gel **101** is dissipated, the surface of the inner core cylinder **103** becomes exposed thereby permitting fragrance or air freshener or insect repellent or the like to be evolved from the central core cylinder **103** into the

atmosphere ***in addition to the volatilizable substance being evolved from the gel or foam 101***". (col. 9, lines 37-43)(emphasis added). Lindauer clearly and unequivocally teaches the simultaneous emanation of the first and second volatile substances.

The Examiner's reference to Lindauer's Figure 2 is confusing, since the Examiner has not identified anything in this figure that is equivalent to the presently claimed first, second or third phases, and the applicants cannot identify any equivalent features either. Nonetheless, Lindauer clearly states that "[t]he fragrance evolving into the environment in FIG.2 is coming from ***both the gel layer and the particulate lower layer*** into the environment". (col. 7, line 68-col. 8, line 4). Accordingly, Lindauer in view of Benko fail to teach all of the limitations of the presently claimed invention.

The differences between the presently claimed invention and Lindauer in view of Benko, as described herein, are discernable and significant. There is clearly no suggestion in Lindauer to the skilled artisan to modify Lindauer such that the second phase is only able to evaporate after the first phase has substantially completely evaporated, nor is there any suggestion to modify the construction of the article to control vaporization rates. Simply put, the differences between the presently claimed invention and the prior art are outside the reach of any design driven adaptations.

The differences between the presently claimed invention and Lindauer are too great to be considered "obvious" because they drastically modify the functionality of the device. Lindauer's device is unable to control vaporization release rates such as in the present invention. Indeed, Lindauer merely teaches randomized scattering of the first phase particles within the third phase, wherein one or both will evaporate at a random time interval depending on which of these phases are exposed to the air during evaporation. The second phase also evaporates on a random basis

once the mixed first and third phases have randomly evaporated sufficiently to expose the second phase to the air. The present invention, on the other hand, is able to control the vaporization release rates, due the third phase and the partition wall or "limbs". Indeed, they are inventive improvements that were completely unrecognized by the prior art.

Based on the foregoing, the applicants submit that a *prima facie* case of obviousness cannot be established, and respectfully request that the Examiner withdraw the rejections. Accordingly, the applicants believe the claims are now in condition for allowance, and such favorable action is respectfully requested.

The applicants believe the claimed design is now in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the phone number listed below.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By /Mark D. Marin/

Mark D. Marin
Reg. No. 50,842
875 Third Avenue - 18th Floor
New York, New York 10022
Phone: (212) 808-0700
Fax: (212) 808-0844